



May 25, 2001

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2001-2169

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147658.

The Comptroller of Public Accounts (the "comptroller") received a request for, among other information, "[c]opies of all requests for public information filed with [the comptroller] by Brint Ryan, Ryan & Company, Mark Eidman and/or their representatives, from January 1, 1997 to present."¹ You have submitted for our review documents which you indicate to be responsive to the request.² You assert that the taxpayer identifying information contained in the submitted documents, which you have marked, is information that may be excepted from disclosure under section 552.110 of the Government Code. You indicate that the remaining information in the submitted documents was released to the requestor. The comptroller has submitted no arguments in support of the section 552.110 exception and takes no position with respect to its applicability. However, pursuant to section 552.305 of the Government Code, you notified Ryan & Company and the law firm of Scott, Douglas &

¹The written request also seeks other information. Because you state that the only category of information at issue is the information that is responsive to the above request and that you have withheld from the requestor, and based on our review of your correspondence to the requestor, we assume that you have released the remaining requested information.

²The request specifically seeks *copies* of the public information requests. You submitted no such copies. The submitted documents, you advise, were generated from the comptroller's mail tracking system "and an older database system." Your comments to this office also indicate that you discussed the request with the requestor, and that the submitted documents are "acceptable." We thus assume from your comments that the requestor consented to this modification, and that the submitted documents are therefore responsive to the request. See Gov't Code § 552.222(b).

McConnico (the "law firm") of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Ryan & Co. and the law firm each responded to the notice, and each assert sections 552.101 and 552.110 of the Government Code. The requestor also has submitted comment to this office. *See* Gov't Code § 552.304. We have considered the asserted exceptions, and the submitted comments and arguments, and we have reviewed the submitted information.

Initially, we must address a procedural matter. You advise this office that the comptroller received the request on February 26, 2001. Pursuant to section 552.301(b) of the Government Code, the comptroller was required to request a decision from this office and state the exceptions that apply no later than the 10th business day after the date of the comptroller's receipt of the request. The comptroller also was required to provide certain information to the requestor by that same deadline. *See id.* § 552.301(d). The comptroller also was required to submit to this office, no later than the 15th business day after receipt of the request, certain additional categories of information. *See id.* § 552.301(e). You acknowledge that the comptroller did not timely comply with these provisions. Accordingly, the requested information is "presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." *Id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that a compelling reason sufficient to overcome the section 552.302 presumption of openness exists where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Accordingly, we next address the section 552.101 and 552.110 assertions.

Section 552.110 protects the interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. *See* Gov't Code § 552.110(a), (b). Each of the third parties has submitted arguments in support of withholding the taxpayer identities at issue, and both contend that the information you have withheld from the requestor amounts to a list of their respective clients. Both third parties further argue the applicability of section 552.110 to their client lists. However, we note that the mere fact that an individual or entity requested information pertaining to an identified taxpayer does not reveal whether the taxpayer is a client of the individual or entity. In addition, we find no information in the submitted documents that reveals whether or not the taxpayer that is identified in each request is a client of the requestor. We therefore cannot agree with the contention that releasing the information at issue reveals the identities of any client of either of the third parties who submitted comment to this office. We accordingly have no basis for concluding that the taxpayer identifying information in the submitted documents is excepted from disclosure under section 552.110 of the Government Code.

Each third party also raises section 552.101 in conjunction with section 111.006 of the Tax Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 111.006 of the Tax Code. Section 111.006 provides, in relevant part, that "all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). However, we have no indication in this instance that any of the taxpayer identifying information in the submitted documents was "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees[.]" Thus, we conclude that none of the taxpayer identities is protected on that basis.

We note, however, that this office has previously ruled that the final decision in comptroller administrative hearings must be made available to the public, but with the information identifying the taxpayer redacted from such decisions because such decisions contain information about the taxpayer that is protected under section 111.006. By de-identifying these decisions, the comptroller ensures that the business operations of the taxpayer are protected while the resolution of the tax issue, including the legal issues and fact findings, is still available to the public. *Cf.* Attorney General Opinion H-223 (1974). We thus understand that the comptroller makes such decisions available to the public, in de-identified form. We further note that the submitted documents contain references to the hearing numbers of three taxpayers, which taxpayers are also identified in connection with the hearing number. Because the comptroller has evidently released the hearing numbers to the requestor, we find that the identities of these three taxpayers must be withheld in this instance pursuant to section 552.101 in conjunction with section 111.006 of the Tax Code. We have marked the taxpayer identifying information at issue which the comptroller must redact from the submitted documents prior to their release pursuant to section 552.101.

Otherwise, because none of the remaining taxpayer identities has been demonstrated to be protected under section 552.101, and because the release of the taxpayer identities does not reveal whether the taxpayer is a client of Ryan & Company or the law firm, the remaining taxpayer identifying information contained in the submitted documents is not excepted from disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

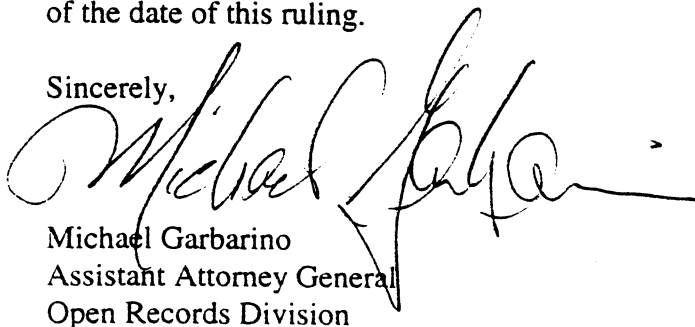
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 147658

Encl. Submitted documents

cc: Mr. Brian Wallstin
Houston Press
1621 Milam, Suite 100
Houston, Texas 77002
(w/o enclosures)

Mr. G. Brint Ryan
Ryan & Company
Three Galleria Tower
13155 Noel Road, 12th Floor, LB72
Dallas, Texas 75240-5090
(w/o enclosures)

Mr. Mark Eidman
Scott, Douglass & McConnico
One American Center, 15th Floor
600 Congress Avenue
Austin, Texas 78701
(w/o enclosures)